In the Supreme Court of the United States

OCTOBER TERM, 1973

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 73-1095

ABE LAVINE, individually and as Commissioner of the Department of Social Services of the State of New York,
Appellant,

vs.

SYLVIA SHIRLEY, individually and on behalf of her minor dependent children, TAMMY LYNN and LISA MARIE, and on behalf of all others similarly situated;

ELIZABETH ANDERSON, individually and on behalf of her minor dependent child, JOANNE, and on behalf of all others similarly situated;

JANE DOE, individually and on behalf of her minor dependent child, KIRSTEN WYNN, and on behalf of all others similarly situated,

Appellees,

and

JOHN LASCARIS, individually and as Commissioner of the Department of Social Services of the County of Onondaga,

Appellee.

On appeal from the United States District Court for the Northern District of New York

Brief of the State of California as Amicus Curiae in support of Appellant

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Brief of the State of California as Amicus Curiae in support of Appellant

INTRODUCTION

This brief is submitted by the State of California, sponsored by its Attorney General, as *amicus curiae* in support of appellant. The brief is submitted in support of the proposition that there is nothing in the Social Security Act which

prohibits a State from requiring, as a condition of eligibility for Aid to Families With Dependent Children (AFDC), that the applicant reveal information regarding the identity and whereabouts of the alleged "absent parent" and cooperate with the State in its effort to establish paternity and collect support from such "absent parent".

We have read the Brief for Appellant Lavine as well as the brief submitted by *amicus curiae* Pacific Legal Foundation. We believe that those briefs contain a careful and correct analysis of the relevant statutes and cases. It is not the purpose of this brief to simply reiterate those arguments. Rather, the purpose of this brief is to demonstrate how the decision in the present case and those like it have operated so as to frustrate express provisions of the Social Security Act.

ARGUMENT

There Is Nothing in the Social Security Act Which Purports to Prevent a State from Requiring an Applicant for AFDC to Give Information Regarding the Alleged "Absent Parent". In Fact, Proper Administration of the Program Requires Such Information.

The effect on a State's AFDC program of the acceptance of the position of appellee can be vividly demonstrated by examining the current situation in California.

California, like New York, has enacted as part of its AFDC program a requirement that, as a condition of eligibility, the applicant must, if she has such knowledge, give the welfare department information regarding the identity and whereabouts of the "absent parent". The statute also requires the applicant to cooperate with the district attorney in his attempt to seek support for the dependent child from such "absent parent". Welfare and Institutions Code, section 11477.

In 1969, an action was commenced in federal district court challenging that statutory provision to the extent it required the applicant to sign a criminal complaint for non-support against the "absent parent". The court entered a preliminary injunction against enforcement of that portion of the statute. *Taylor v. Martin*, 330 F.Supp. 85 (N.D. Cal. 1971), aff'd sub nom. *Carleson v. Taylor*, 404 U.S. 980 (1971). Thereafter, another action, entitled *Doe v. Carleson* (N.D. Cal. No. 71-864 RFP), was filed attacking the remaining portions of the statute. In July 1972, the following order was entered in that case:

> "Defendant ROBERT CARLSON, Director of the State Department of Social Welfare, his agents, employees and all persons acting in concert or participating with him are hereby enjoined and restrained from invoking California Welfare and Institutions Code §§ 11477(a), 11477(c) or 11477(d) or any state statute or regulation, which results in the ineligibility for AFDC of any person because the applicant refuses to be interviewed by the district attorney, refuses to disclose the identity or whereabouts of an absent parent of her or his children, or requests dismissal of a criminal non-support complaint previously filed against an absent parent of her or his children."

Then, in March 1973, the court entered the following order in the consolidated cases:

> "Defendants, their officers, agents, servants, employees, and attorneys, and all those persons in active concert or participation with them who receive actual notice of this order are hereby ordered as supplemental relief to this Court's orders in *Taylor* and *Doe* not to instruct, or advise members of the plaintiff's class contrary to law that benefits may be terminated for failure to comply with the requirements of Cal. Wel. and Inst. Code § 11477. *It is further ordered that*

defendant Carlson implement procedures within thirty days from the date of this order to affirmatively insure that recipients are informed that their cooperation or lack thereof within the meaning of Cal. Wel. and Inst. Code § 11477 will not affect their eligibility." (Emphasis added.)

Thus, as a result of these orders, California is not only prohibited from enforcing the statute, it must affirmatively tell applicants that it is not necessary to cooperate with the State in its effort to seek support from the "absent parent".

Despite these orders, the Director of the Department of Benefit Payments (then known as the Department of Social Welfare) determined that it was necessary to obtain certain basic information in order to determine eligibility. Accordingly, he informed the counties that they should require the applicant for AFDC to give the name, last known address and Social Security number of the "absent parent". In October 1973 the District Court entered an order holding the Director in contempt of the July 1972 order on the grounds that requiring even this basic information was not authorized by the Social Security Act.

Thus, as it now stands in California, the local welfare department cannot even require an applicant for AFDC to give the name of the "absent parent". This means, for example, that if a woman claims that the man with whom she has been living for the last three years is not the father of her one-year old child, the welfare department cannot require her to tell who the father is so that they can determine whether there really is an "absent parent".

The effect of the nullification of the statute, coupled with the requirement that the counties must affirmatively tell applicants that they need not cooperate or furnish information regarding the "absent parent", has been staggering.

The California Department of Benefit Payments recently requested the counties to supply the Department with statistics regarding the number of applicants who have in fact refused to cooperate during the last quarter of 1973 and the first quarter of 1974. While the reports from all the counties are not the same, it is obvious that refusals to cooperate are more than just isolated examples. In Fresno County, there were 347 refusals, which represented 58 percent of all new cases. Likewise, Kings County: 31 refusals, representing 63 percent; Orange County: 838 refusals, representing 36 percent; San Mateo County: 244 refusals, representing 75 percent; Santa Cruz County: 45 refusals, representing 33 percent; Sonoma County: 55 refusals, representing 42 percent; Stanislaus County: 126 refusals, representing 33 percent; Yuba County: 71 refusals, representing 45 percent. There can be no question but that these refusals to cooperate or even furnish basic facts regarding the identity and whereabouts of the "absent parent" seriously hamper the State's ability to effectively administer the AFDC program and carry out programs specifically mandated by Congress. Judicial decisions requiring these results are not based on valid grounds and should be overruled or reversed.

The theory underlying the lower court decisions invalidating statutes such as New York's and California's is that such statutes add an eligibility requirement for AFDC and that the Social Security Act prohibits the addition of any eligibility requirement not specifically set forth in the Act. That basic premise is erroneous. In *New York State Department of Social Services v. Dublino*, 413 U.S. 405 (1973), this Court reaffirmed the principle stated in *King v. Smith*, 392 U.S. 309 (1968) that the AFDC program was a "scheme of cooperative federalism" and that "this Court should not

lightly interfere" with attempts by the States to operate their programs in a manner not inconsistent with the basic objectives established in the Act. 413 U.S., at 413. In *Dublino*, this Court held that the New York Work Rules, which indeed added an eligibility requirement, were not to be held invalid unless it was concluded that "particular sections" of the Work Rules "contravene the specific provisions of the Federal Social Security Act." 413 U.S., at 422.

It is clear that the Act does not contain any specific statement that States cannot add an eligibility requirement which is designed to further the goals of the AFDC program. The section relied upon by the District Court in California was 42 U.S.C. § 602(a)(10). However, such a construction of section 602 was rejected by this Court in *Jefferson v. Hackney*, 406 U.S. 535, at 544-5 (1972).

CONCLUSION

AFDC program provisions such as those of New York and California which require, as a condition of eligibility, that the applicant reveal the identity and whereabouts, if known, of the "absent parent" and cooperate in the State's attempt to collect support for the dependent child from such "absent parent" fulfill a valid purpose consistent with the AFDC program. They do not contravene any specific provision of the Federal Social Security Act and, accordingly, should be upheld.

Allowing the States to bring an independent non-support action and subpoena the recipient to testify about the "absent parent" is all well and good. But it is not in and of itself a sufficient answer to the problem. States should not have to wait until after the applicant is placed on aid. States should be allowed to deal with the problem at the threshold and require cooperation at the initial stages

where, as a realistic and practical matter, it will be most effective and productive.

The judgment of the District Court should be reversed.

Respectfully submitted,

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